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MARCH 2020 | FACT SHEET

Promoting Pay Transparency to Fight the Gender Wage Gap: Creative International Models

Secrecy about pay and pay practices not only masks gender and racial pay gaps, it perpetuates them. Cultural norms around pay secrecy remain strong. Many employers explicitly prohibit or discourage discussion of pay, even though this practice is illegal,[1] leading workers to be fearful of questioning the validity of their pay due to workplace power dynamics or threat of retaliation. And because pay often is cloaked in secrecy, when a discriminatory salary decision is made, it is seldom as obvious to an affected employee as a termination or a denial of a promotion.[2] As a result, employees often have no idea they are experiencing pay discrimination; even when they suspect it, they face significant obstacles in gathering the information that would prove it, which undermines their ability to challenge such discrimination. Secrecy around pay also reduces employer incentives to proactively review and evaluate their compensation practices and address any unjustified disparities between employees. In short, pay secrecy allows unjustified pay gaps to grow in the shadows, undetected.

In 2016, the Equal Employment Opportunity Commission (EEOC) announced changes to the EEO-1, a form it has used for decades to annually collect workforce demographic information from employers with 100 or more employees. The changes for the first time required employers to confidentially report to the EEOC employee compensation data and hours worked within 12 pay bands, broken down by gender, race, ethnicity, and job category. This pay data promised to give the EEOC an invaluable tool to fight pay discrimination by helping the agency identify firms with racial or gender pay gaps within each job category that significantly diverge from their industry and regional peers, for potential further assessment. It also would prompt employers to proactively and regularly review and evaluate their own payrolls and correct unjustified pay gaps. Companies were scheduled to submit the data beginning in March 2018, but in 2017 the Trump Administration halted the pay data collection, subjecting it to a largely unexplained "review and stay."[3] In response, NWLC and partners sued the Trump administration and in March 2019, a federal district court judge ruled that the administration's stay was illegal and reinstated the pay data collection.[4] Pursuant to the court's order, EEOC collected pay data from companies for the years 2017 and 2018. At the same time, however, the government appealed the decision, and EEOC issued a notice indicating that after it complied with the court's order it would cease collecting pay data via the EEO-1 form.[5] NWLC and our partners will continue to use all the resources at our disposal to protect this long and hard-fought victory for pay transparency at the federal level and will seek to ensure that the EEOC analyzes the pay data it has collected and uses this data to guide its pay discrimination enforcement work.

This win represents critical movement towards increased pay transparency in the United States.[6] Recent international efforts to require employers to report pay data or wage gaps, or to require employers to demonstrate pay equity, suggest creative approaches that can further inspire U.S. policy makers.

Iceland

In January 2018, Iceland passed a new law requiring public and private employers to obtain an Equal Pay Certification once every three years, proving that they are paying women and men equally.[7] In order to obtain the certification, employers will need to show compliance with an equal pay management system called the "Equal Pay Standard."[8] The standard is comprised of rules and guidelines to analyze pay structures within companies[9] and determine whether pay inequities exist between male and female employees. The Icelandic government will fine companies that fail to receive the certification.[10] The standard was developed jointly by Iceland's unions, the Icelandic employers' confederation, and government officials.

The certification requirement will take effect in phases. The first group of employers – employers with 250 or more employees – was required to implement the standard by December 31, 2018. The final group – employers with at least 25 employees – must comply by December 31, 2021. State employers are on a different and faster timeline, however. All state ministries need to have undergone certification by December 31, 2018, and state institutions and companies owned by the state with 25 or more employees, need to have undergone certification by December 31, 2019.[11] Initial rollout of the standard has reportedly been slow-going. As of the end of 2019, of the 269 companies and institutions that were required to obtain the certification by that point, only 134 had done so.[12] The most recent numbers from the Icelandic Center for Gender Equality report that as of March 24, 2020, 176 entities have obtained the certification.[13]

United Kingdom

As of 2018, England, Wales and Scotland require public and private employers with at least 250 employees to annually publish information designed to show whether there is a difference in the mean and median pay of their male and female employees.[14] Each covered employer must submit to the U.K.'s Equality and Human Rights Commission 1) the difference between the mean and median hourly rates of pay for male and female employees; 2) the difference between the mean and median bonus pay paid to male and female employees; 3) the proportions of male and female employees who were paid bonus pay; and 4) the proportions of male and female employees in pre-set pay bands by quartiles: lower, lower middle, upper middle and upper.[15] Employers must publish their gender pay gap data and a written statement confirming that the published information is accurate and signed by "an appropriate person" as defined by type of employer on their public facing website, and report their data to the government through an online portal.[16] The regulation defines "employee" for reporting purposes as a person with a contract of employment with the organization. However, it leaves out employees being paid at less than their usual rate, such as employees who are being paid at a portion of their usual salary while on maternity leave.

Since 2018 more than 10,000 companies have complied with the new regulation. Initial data from the first wave of reporting revealed that some large multinational companies, including U.S.-based companies with U.K. operations, such as Apple and JP Morgan, have significant gender gaps in pay.[17] The second year of reporting also revealed significant gender pay gaps in companies across a variety of industries, and some companies reported an increase in the wage gap between male and female employees from 2018 to 2019.[18]

The data is publicly available and searchable on a U.K. government website,[19] and media organizations are also analyzing the data by employer, industry, and pay quartile and publishing the results, publicly revealing the companies with the largest disparities.[20] Some companies have also filed action plans along with their data, demonstrating that the national reporting requirement spurred companies to develop a plan to address disparities.[21] As required under law, companies are creating public-facing webpages with their data, and are also publicly acknowledging the importance of gender equality for the overall good of the workforce.[22]

However, the Equality and Human Rights Commission, the agency that enforces the regulation, lacks strong enforcement authority. A 2018 freedom of information request from The Guardian showed that no companies were fined after the first year of reporting, even though hundreds of companies did not accurately file their gender pay gap figures on time. Instead, companies would only be fined if a case were to reach the courts.[23] As a result of this reporting, the Commission has since published a website detailing non-monetary enforcement actions it took against companies in both 2018 and 2019.[24]

Australia

In Australia, all private sector employers with 100 or more employees must annually report pay data to the Workplace Gender Equality Agency, a special agency created in 2012.[25] Employers must report on: the gender composition of their workforce and governing bodies by occupational categories; compensation data, including base salary and total remuneration which includes base salary plus other payments; the availability and utility of workplace practices related to flexible working arrangements for employees with family or caregiving responsibilities; whether or not the employer has consulted with employees on gender equality issues at work; and any other matters specified by the agency, such as sex harassment and discrimination issues within the workplace.[26]

Reports detailing information other than pay are then made publicly available for each company. For pay data, the Agency maintains a website with aggregate pay data information showing pay gap percentage trends by industry.[27] Individuals may also use the site to drill down into industry-specific information, and compare wage gap numbers and other data across multiple industries.[28]

As of 2016, three years after Australia's reporting requirement went into effect, 70 percent of Australian employers had policies in place to support workplace gender equality.[29] The most recent progress report generated by the Workplace Gender Equality Agency shows that the gender pay gap has declined in most industries and across most manager and occupational categories between 2013-2018.[30] However, the gap varies industry to industry, and continues to rise in some industries.[31]

Austria

Pursuant to Austria's Equal Treatment Act, every two years companies with 150 or more employees are required to produce reports including, among other measures, the number of women and men by occupational group and the average or median income of women and men by occupational group. The income reported includes benefits and bonuses.[32] These reports are shared with organizational "works councils" (bodies of elected workers who represent the interests of fellow workers to management). Those councils may then use the information to better negotiate over working conditions and target opportunities for increasing gender equity.[33]

Belgium

Belgium has a number of laws and policies in place to narrow the gender wage gap. Belgium requires companies to include differences in salaries between men and women in annual audits and reports.[34] In addition, in 2012 Belgium passed a law mandating that every two years, organizations with 50 or more employees must conduct a gender pay gap analysis. The analysis includes gender-segregated mean basic pay and allowances per employee category, job level, job evaluation class, seniority, and education level.[35] If this analysis shows that women's pay is lower than men's, the organization must produce an action plan to narrow the gap.[36]

Germany

As part of Germany's 2017 Transparency in Pay Act which went into effect in January 2018, employers with more than 500 employees who are required to publish a status report under the German Commercial Code are required to combine their status report with a public report detailing measures the company has taken to promote gender equality and achieve equal pay, along with the impact of any measures.[37] These reports have to be made every three to five years, depending on whether or not the employer is bound by a collective wage agreement.[38] Under the Transparency in Pay Act requirements, however, employers are not required to disclose company-wide pay data. The lack of an affirmative pay data reporting obligation weakens the overall usefulness of the reporting obligation in incentivizing employer self-evaluation and correction and improving the efficiency of government outreach and enforcement efforts.

In an effort to allow employees to more easily assess their pay in relation to their co-workers, employees in Germany working for employers with more than 200 employees may request information about the salaries of co-workers in similar positions. Specifically, the information is to include the average monthly gross salary of at least six co-workers of the opposite gender who perform similar work, as well as information about bonuses or other perks.[39] Initial surveys of both employee representatives and companies indicate that the implementation of these measures has been slow. One survey of employee representatives showed a minority of companies have begun to review their pay structures. Another survey of German companies showed that few individuals were inquiring about the pay of coworkers as of February 2019.[40]

Canada

In 2018, Canada passed An Act to Establish a Proactive Pay Equity Regime with the Federal Public and Private Sectors, which becomes effective in 2020.[41] Under the Act, federally regulated public and private sector employers with at least 10 employees are required to examine their compensation practices and create pay equity plans to remedy the gender wage gaps in their workplaces.[42] They will also be required to provide annual statements on their pay equity plans to the Pay Equity Commissioner.[43] To ensure that employers comply with the law, the Canadian government will introduce an administrative monetary penalty system for employers.[44] The Canadian government has also established a federal Pay Equity Commissioner responsible for public education as well as the adjudication of disputes related to pay equity under the new act. In addition to the ability to issue monetary penalties for non-compliance, the Commissioner will have dedicated funding to initiate audits and conduct investigations.[45]

France

In September 2018, France enacted legislation, For the Freedom to Choose One's Professional Future, that requires companies with more than 50 employees to measure their gender pay gaps and to disclose the steps taken to remedy those gaps.[46] Using a tool released by the French government in November 2018, companies are required to measure their gender pay gaps based on a 100-point scale and to report their scores on their websites.[47] The pay analysis takes into account, among other factors, the pay gap between men and women, calculated on the basis of the average remuneration of women compared to men by age group and equivalent job category as well as the percentage of female employees with a pay increase in the year following their return from maternity leave.[48] When a company's results are below a certain level, the company will be required to propose "a catch-up" plan, which will be created in cooperation with unions operating in the workplace during negotiations regarding gender equality in the workplace.[49] If a company does not report its gender wage gaps or if it does not correct its gender wage gaps within three years, it may incur a financial penalty of up to one percent of the company's total payroll.[50] The legislation went into effect for companies employing over 250 employees in January 2019 and for companies employing over 50 employees in January 2020.[51] Initial reporting revealed an average score of 80, but companies were slow to comply with the reporting requirements with over half reporting late and with many initial reports showing companies scoring so low that they would be subject to the one percent fine unless they took corrective action within three years.[52]

Denmark

Pursuant to Denmark's 2006 Act on Gender Specific Pay Statistics, which amended Denmark's Equal Pay Act, companies with at least 35 employees are required to annually disclose gender-specific pay statistics to the government.[53] This provision is included in Denmark's 2008 Equal Pay Act.[54] Researchers recently examined wage statistics of Danish companies before and after the 2006 Act on Gender Specific Pay Statistics and found that from 2003 to 2008, the gender pay gap at mandatory reporting firms shrank seven percent, while the gap at control firms did not change.[55]

Sweden, Finland, and Norway

Sweden, Finland and Norway expand transparency using a novel approach;[56] the government makes income tax information public for everyone who files taxes, enabling individuals to easily find out what their boss and coworkers, but also neighbors and friends are being paid.[57] This approach normalizes pay transparency across the population.

* * *

In the United States, the gender wage gap has barely budged in over a decade and continues to shortchange women, with women of color hit hardest. International examples provide a roadmap for different levels of government across the country to enact systems to expose race and gender wage gaps. We must continue to take action to increase pay transparency, allowing employees, employee organizations and government agencies to uncover pernicious pay discrimination and prodding employers to engage in self-evaluation and self-correction. These measures will help close race and gender wage gaps once and for all.

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2 As Justice Ginsburg has noted:

Pay disparities often occur, as they did in Ledbetter's case, in small increments; cause to suspect that discrimination is at work develops only over time. Comparative pay information, moreover, is often hidden from the employee's view. Employers may keep under wraps the pay differentials maintained among supervisors, no less the reasons for those differentials. Small initial discrepancies may not be seen as meet for a federal case, particularly when the employee, trying to succeed in a nontraditional environment, is averse to making waves. Pay disparities are thus significantly different from adverse actions "such as termination, failure to promote, …or refusal to hire," all involving fully communicated discrete acts, "easy to identify" as discriminatory.

Ledbetter v. Goodyear Tire & Rubber Co., 550 U.S. 618, 645 (2007) (Ginsburg, J., dissenting).

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